**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

110

44

| | | |
|---|---|---|
| STATE OF DELAWARE, | ) | |
| | ) | |
| v. | ) | Case No. 1508020940A & B |
| | ) | |
| DEMONTE JOHNSON, | ) | |
| | ) | |
| Defendant. | ) | |



**OPINION**

Date Submitted: April 26, 2018
Date Decided: July 25, 2018

*Upon Defendant Demonte Johnson's Motion for New Trial*: **DENIED**

Matthew Frawley, Esquire, and Eric Zubrow, Esquire, Department of Justice, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware, Deputy Attorneys General.

John A. Barber, Esquire, Law Office of John A. Barber, 24B Trolley Square, Wilmington, Delaware; Brian J. Chapman, Esquire, Law Office of Brian J. Chapman, 300 Creek View Road, Suite 103, Newark, Delaware, Attorneys for Defendant.

**Jurden, P.J.**

## I. FACTUAL BACKGROUND

Demonte Johnson was charged with Murder First Degree, Possession of a Firearm During the Commission of a Felony ("PFDCF"), and Possession of a Firearm by a Person Prohibited ("PFBPP") in connection with the May 27, 2014 shooting death of Alphonso Boyd. Johnson's first trial resulted in a mistrial. During the course of his second trial, the State presented three eyewitnesses who identified Johnson as the shooter, two statements made by Johnson in which he admitted to shooting Boyd,[1] expert witness testimony placing Johnson's cell phone at the scene of the crime,[2] and Johnson's prison phone calls during which the State contended he coordinated plans in an effort to prevent a key witness from testifying.[3] The jury found Johnson guilty of Murder First Degree, PFDCF, and PFBPP. Before the Court is Johnson's Motion for New Trial pursuant to Superior Court Criminal Rule 33.[4] For the reasons that follow, Johnson's Motion is **DENIED.**

---

[1] One of these statements was testified to by State's witness Shakia Hodges; the other was testified to by State's witness Joshua Hinton.

[2] Brian Daly, through the use of cell-tower mapping.

[3] The State argued Johnson attempted to prevent Shakia Hodges from testifying. Hodges did not appear on the day she was scheduled to testify, but she ultimately testified at trial. State's Resp. to Def.'s Mot. New Trial ("State's Resp.") at 8–9, 16 (D.I. 32, 97).

[4] Mot. New Trial (D.I. 30, 95). On February 8, 2018, the Court granted the Defendant a 30-day extension to file his Motion for New Trial pursuant to Super. Ct. Crim. R. 33. Order granting extension (D.I. 93).

## II. PARTIES' CONTENTIONS

Johnson claims his right to a fair trial was unfairly prejudiced as a result of: (1) *Batson* violations;[5] (2) improper questioning regarding Johnson's post-arrest silence; (3) prosecutorial misconduct stemming from the State's cross-examination of Johnson about police reports; and (4) prejudicial testimony by Joshua Hinton.[6] Johnson argues the Court should grant him a new trial in the interests of justice.[7]

In opposition, the State argues that the issues Johnson raises in his Motion were properly resolved during the trial. First, with regard to the *Batson* challenge, the State argues it articulated race-neutral decisions for striking specific jurors at trial.[8] Second, with regard to the questioning about Johnson's post-arrest silence, the State argues that the curative instruction the Court issued to the jury cured any potential prejudice to Johnson.[9] Third, with regard to the cross-examination of Johnson about police reports, the State contends it was not improper and, even if it was, this was not a close case, a stipulation read to the jury made clear that Johnson had not reviewed police reports,[10] and the Court issued curative instruction to the same effect.[11] Fourth, the State maintains that Hinton's comments were not harmful

---

[5] *Batson v. Kentucky*, 476 U.S. 79 (1986).
[6] Mot. New Trial at 2.
[7] *Id.*
[8] State's Resp. at 4.
[9] *Id.* at 10.
[10] Def.'s Appendix ("A") at 83.
[11] A78–79.

to Johnson because it was not a close case, and Johnson failed to make a timely objection.[12]

## III. STANDARD OF REVIEW

Superior Court Criminal Rule 33 provides, "[t]he Court on motion of a defendant may grant a new trial to that defendant if required in the interest of justice." A new trial is warranted "only if the error complained of resulted in actual prejudice or so infringed upon defendant's fundamental right to a fair trial as to raise a presumption of prejudice,"[13] and the grounds for the new trial must have been asserted during the original trial.[14] Because the trial judge is in the best position to measure the risk of prejudice from events at trial, the decision to grant a new trial in the interest of justice rests in the trial judge's "very broad discretion."[15]

## IV. DISCUSSION

### A. *Batson* Challenge

Johnson argues the prosecutor exercised peremptory challenges during jury selection in a racially-discriminatory manner, thereby violating *Batson v.*

---

[12] State's Resp. at 16.
[13] *Hughes v. State*, 490 A.2d 1034, 1043 (Del. 1985); *see Starling v. State*, 882 A.2d 747, 755 (Del. 2005).
[14] *State v. Halko*, 193 A.2d 817 (1963).
[15] *See Ney v. State*, 1998 WL 382645, at *1 (Del. 1998) (TABLE); *Styler v. State*, 417 A.2d 948, 953 (Del. 1980) (holding that trial judges have "very broad discretion" in determining whether an entire case needs to be retried).

*Kentucky*.[16] In response, the State argues that it struck the particular jurors for race-neutral reasons.[17] Racial discrimination in jury selection violates a defendant's right to a fair trial and offends the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[18] "Defendants are harmed, of course, when racial discrimination in jury selection compromises the right of trial by impartial jury, but racial minorities are harmed more generally, for prosecutors drawing racial lines in picking juries establish 'state-sponsored group stereotypes rooted in, and reflective of, historical prejudice.'"[19]

In *Batson*, the prosecutor used peremptory challenges to strike four African American jurors, resulting in a jury composed of only Caucasian jurors.[20] The United States Supreme Court held that a prosecutor may exercise peremptory challenges "'for any reason at all, as long as that reason is related to his view concerning the outcome' of the case to be tried [but] the Equal Protection Clause forbids the prosecutor to challenge jurors solely on account of their race or on the assumption that black jurors as a group will be unable impartially to consider the

---

[16] *Batson*, 476 U.S. 79; Mot. New Trial at 3. At trial, the Court rejected Johnson's argument that the State violated *Batson*. *See* A38.
[17] State's Resp. at 5.
[18] U.S. Const. amend. XIV, § 1.
[19] *Miller-El v. Dretke*, 545 U.S. 231, 237–38 (2005) (internal citations omitted). "[T]he very integrity of the courts is jeopardized when a prosecutor's discrimination 'invites cynicism respecting the jury's neutrality' and undermines public confidence in adjudication." *Jones v. State*, 938 A.2d 626, 631 (Del. 2007) (quoting *Miller-El*, 545 U.S. at 238 (citing *Powers v. Ohio*, 499 U.S. 400, 412 (1991))).
[20] *Batson*, 476 U.S. at 82–83.

State's case against a black defendant."[21] In so ruling, the U.S. Supreme Court established the following three-part analysis:

> First, the defendant must make a *prima facie* showing that the prosecutor has exercised peremptory challenges on the basis of race.... Second, if the requisite showing has been made, the burden shifts to the prosecutor to articulate a race-neutral explanation for striking the jurors in question.... Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination....[22]

Here, Defense Counsel made a *Batson* challenge after the prosecutor struck three African American women jurors: Jurors 5, 7, and 4.[23] Based on these strikes, the Court found Johnson had made the requisite *prima facie* showing. "The second step of [the *Batson* analysis] does not demand an explanation that is persuasive, or even plausible."[24] "[I]f the reason is not discriminatory and relates to the outcome of the case to be tried, it suffices."[25] In the case *sub judice*, the Court found that the prosecutor offered a race-neutral reason for each peremptory challenge at issue. At sidebar, the prosecutor explained he struck Juror Number 5 because:

> [S]he was giving the State ugly looks while she was in the box. [The State] had no information about her employment on the questionnaire. And her dress,

---

[21] *Id.* at 89.
[22] *Jones*, 938 A.2d at 631 (citing *Robertson v. State*, 630 A.2d 1084, 1089 (Del. 1993)); *see also McCoy v. State*, 112 A.3d 239, 251 (Del. 2015); *Dixon v. State*, 673 A.2d 1220, 1223 (Del. 1996) (citing *Purkett v. Elem*, 514 U.S. 765 (1995)).
[23] A37–38.
[24] *Purkett*, 514 U.S. at 768.
[25] *State v. Jones*, 2007 WL 2142917, at *2 (Del. Super. July 3, 2007).

> including wearing a hat in the courtroom, was concerning to the State in terms of respecting the process.[26]

The prosecutor explained he struck Juror Number 7 because she "expressed an inability to understand *voir dire*, which gave the State some concern about her ability to understand some complex things in this trial."[27] The prosecutor explained he struck Juror Number 4 because there was little "information on her juror questionnaire. So the State [had] no idea [] about her background, her employment, or anything like that."[28] According to the State, Jurors Number 5 and 4 were the only jurors on the panel who did not indicate they were retired, and they failed to provide valuable employment information.[29] The Court found at trial that the prosecutor articulated race-neutral explanations.

"[A]fter the prosecutor offers a race-neutral explanation, the burden shifts back to the defendant to prove purposeful discrimination."[30] When the Court asked

---

[26] A38; State's Resp. at 4.

[27] A38; State's Resp. at 5. During *voir dire*, Juror Number 7 indicated she would have a problem following the Court's instructions if she did not agree with the applicable law. Soon after coming forward, she explained she had mistakenly cited this issue as a basis to come forward. However, the State remained concerned about her confusion and her ability to understand the facts of this case.

[28] A38; A42; State's Resp. at 5. Juror Number 4 failed to indicate whether she was employed, unemployed, or retired.

[29] State's Resp. at 5. While Defendant correctly notes that Juror Number 5 indicated she was unemployed, the Motion includes no evidence that contradicts Juror Number 4's lack of information relative to the rest of the panel. In its response to the Motion, the State maintains that these reasons set the stricken jurors apart from the remainder of the panel.

[30] *Jones*, 938 A.2d at 631 (citing *Dixon*, 673 A.2d at 1224).

for Defense Counsel's response to the State's race-neutral explanations, Defense Counsel responded:

> Your Honor, I'm not sure lack of information about a certain juror constitutes a reasonable basis to strike the person when it just appears that – I mean, they're a person of color. And the State's operating with more information in this case, they have criminal rap sheets. I didn't hear of any convictions of arrests or anything like that.[31]

In his Motion, Johnson argues the State's explanations for the strikes, "viewed *in toto*," fail to support a race-neutral basis.[32] With regard to Juror Number 5, Johnson argues that the fact her profile included information on her employment, marriage status, gender, race, and education undermines the State's race-neutral explanation.[33] Johnson argues Juror Number 7 demonstrated her ability to understand the case during an exchange with the Court at sidebar, and Juror Number 4's profile included enough data to contradict the State's representation that it contained "zero information."[34]

"The question of intentional discrimination is a pure issue of fact, which must be determined by the Court."[35] "The Court must evaluate all evidence introduced by each side tending to show that race was or was not the real reason for the State's exercise of its peremptory challenges and to determine whether the defendant has

---

[31] A38.
[32] Mot. New Trial at 4.
[33] *Id.*
[34] *Id.* at 5–6.
[35] *Jones*, 2007 WL 2142917, at *2.

met his burden of persuasion as mandated by *Batson*."[36] In addition to determining the credibility of the prosecutor's representations, the Court may consider:

> (1) The percentage of African American veniremembers who are the subject of the prosecutor's peremptory strikes; (2) side-by-side comparisons of some black venire panelists who were struck and white panelists who were allowed to serve in order to determine whether a prosecutor's proffered reason for striking a black panelist applies just as well to an otherwise-similar nonblack who is permitted to serve; (3) the prosecutor's use of procedural mechanisms…to move African American veniremembers to the back of the panel where they are less likely to be selected; (4) evidence of a contrast between the prosecutor's *voir dire* questions posed respectively to black and nonblack panel members…and (5) evidence of a systematic policy or practice within the prosecutor's office of excluding minorities from jury service.[37]

In addition, "the prosecution's decision not to use an available challenge against minority veniremen is also a relevant circumstance to be weighed."[38]

After reviewing the "totality of the relevant facts," the Court determined then, and now, that the State's explanations for the peremptory challenges at issue demonstrate "permissible racially neutral selection criteria."[39] The prosecutor

---

[36] *Id.*

[37] *Jones*, 938 A.2d at 634 (quoting *United States v. Nelson*, 450 F.3d 1201, 1207–08 (10th Cir. 2006)). "The Court, of course, can give no consideration to the factors enumerated (3) and (4) above, since there is no mechanism in this State for the prosecution to alter the order in which veniremen are considered, and, there is no possibility of the prosecutor phrasing questions differently to black and non-black panel members, because all questioning is done by the judge from largely scripted questions." *Jones*, 2007 WL 2142917, at *3.

[38] *Jones*, 938 A.2d at 634 (quoting *United States v. Alvarado*, 923 F.2d 253, 256 (2d Cir. 1991)).

[39] *See Dixon*, 673 A.2d at 1224 (citing *Hernandez v. New York*, 500 U.S. 352, 363 (1991)). To rebut the *prima facie* case, the prosecutor must provide a "clear and reasonably specific"

offered credible explanations to this effect, and other considerations support this conclusion. Not only were the State's explanations at trial specific to the individual jurors and related to the outcome of the case, but the State used only half of its peremptory challenges to strike African American jurors.[40] The State struck a Caucasian juror for his response to *voir dire*, the same reason it struck Juror Number 7.[41] And the State did not exercise two of its peremptory challenges, despite three African Americans remaining on the jury.[42] The ultimate composition of the jury – nine Caucasians, two Asians, and one African American, with two African American and two Caucasian alternates – although never dispositive, also supports the Court's finding.[43] When the burden shifted back to Johnson, Defense Counsel appeared to base its *Batson* challenge on its belief that the State exercised strikes based on juror criminal records which Johnson could not access. This was an incorrect assumption.[44]

---

explanation of "legitimate reasons" for his use of the challenges that are "related to the particular case." *Batson*, 476 U.S. at 98 n. 20. "A 'legitimate reason is not a reason that makes sense, but a reason that does not deny equal protection.'" *Dixon*, 673 A.2d at 1224 (quoting *Purkett*, 514 U.S. at 767). "Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral." *Purkett*, 514 U.S. at 767.

[40] In criminal cases, each party can exercise six peremptory challenges. Only three of the State's six peremptory challenges were exercised to strike African American jurors. *Cf. Jones*, 2007 WL 2142917, at *1.

[41] State's Resp. at 6.

[42] Here, the State only exercised a total of four peremptory challenges, while Defense Counsel exercised all six of its peremptory challenges to strike Caucasian jurors.

[43] *Cf. Dixon*, 673 A.2d at 1224; *Barrow v. State*, 749 A.2d 1230, 1239 (Del. 2000).

[44] *See* State's Resp. at 5 n. 18.

Johnson has failed to meet his burden. He has not offered proof of purposeful discrimination, or evidence of a "systematic policy within the prosecutor's office of excluding minorities from jury service." For the foregoing reasons, the Court finds the State properly exercised its peremptory challenges. Defendant's Motion for New Trial based on purported *Batson* violations is **DENIED**.

### B. Prosecutor's Questioning About Johnson's Post-Arrest Silence and Access to Police Reports

The Court reviews timely objections under a harmless error standard of analysis.[45] Under harmless error review, the Court first reviews the record to determine whether the prosecutor's actions were improper.[46] If no misconduct occurred, the analysis ends.[47] If misconduct has occurred, then the Court must determine "whether the misconduct prejudicially affected the defendant."[48] At trial, Johnson timely objected to the prosecutor's questioning about his post-arrest silence and access to police reports.

Johnson asserts the State violated his due process rights when the prosecutor asked him about "a third opportunity" he had to talk to the police following his arrest.[49] Johnson claims that by asking this question, the State impermissibly used

---

[45] *State v. Spence*, 2014 WL 2089506, at *4 (Del. Super. May 15, 2014).
[46] *Kirkley v. State*, 41 A.3d 372, 376 (Del. 2012).
[47] *Id.*
[48] *Id.*
[49] Mot. New Trial at 9 (citing A75). Although it is not clear from the record whether Johnson was Mirandized upon being formally arrested on September 9, 2015, he had been Mirandized during a

his post-arrest silence to impeach a statement he made at trial.[50] The State argues that the question did not violate Johnson's Fifth Amendment right to remain silent because it did not highlight his silence, Defense Counsel's prompt objection quickly ended the inquiry, and the Court's immediate curative instruction resolved the issue.[51]

Johnson argues *Bowe v. State* is applicable here.[52] In *Bowe*, a defendant (who was convicted of Attempted Robbery Second Degree and Resisting Arrest) claimed he was denied due process of law by prosecutorial misconduct in the form of impermissible cross-examination about his post-arrest silence.[53] At trial, the prosecutor in *Bowe* engaged in a deliberate and "extensive line of questioning in which the defendant's pretrial silence [and incarceration] was highlighted through ridicule."[54] The defense counsel objected only to the prosecutor's improper reference to the defendant's incarceration.[55] The trial judge, recognizing the prosecutor's improper line of questioning and responding to the objection, issued a curative instruction that cautioned the jury to "disregard the fact of [the defendant's]

---

prior interview about the shooting death of Alphonso Boyd on July 15, 2014. Mot. New Trial at 10.

[50] *Id.* at 7–8 (citing *Doyle v. Ohio*, 426 U.S. 610, 618 (1976)).

[51] State's Resp. at 9–10; A76.

[52] Mot. New Trial at 11; *Bowe v. State*, 514 A.2d 408 (Del. 1986).

[53] *Id.*

[54] *Id.* at 411.

[55] *Id.* at 410.

whereabouts."[56] On appeal, the Delaware Supreme Court emphasized the prosecutor's attempted impeachment of the defendant through mention of the defendant's post-arrest silence, and held such questioning to be "prosecutorial overreaching" that is incompatible with the due process afforded to all defendants under the Delaware Constitution.[57] In discussing the potential impact of the prosecutor's impermissible questions in *Bowe*, the Delaware Supreme Court noted:

> In this case there were no independent eyewitnesses to the altercation between the defendant and the alleged victim. Thus the jury was asked to choose between two conflicting and uncorroborated versions of the incident. In this context impeachment assumes a critical role and to the extent the prosecutor's questioning subjected the defendant to improper impeachment it had the potential to affect the outcome of the trial.[58]

The facts here differ significantly from those in *Bowe*. First, the prosecutor here asked <u>one</u> impermissible question: **"You actually had a third opportunity to talk to Detective Curley, too; right?"**[59] Second, as the Court pointed out at sidebar, Johnson's answer essentially "impeached" the State's credibility and shifted the

---

[56] *Id.* at 411.
[57] *Bowe*, 514 A.2d at 411; Del. Const. art. I, § 7.
[58] *Bowe*, 514 A.2d at 410.
[59] A75. Johnson responded:

> A. A third opportunity?
> Q. Yeah, when he arrested you.
> A. When who arrested me?
> Q. Wilmington Police and Detective Curley, through Detective Curley's work.
> [DEFENSE COUNSEL]: Sidebar, Your Honor.
> THE WITNESS: He never arrested me.

jury's focus to the State's misstatement, not the question.[60] Third, assuming arguendo that the jury did infer from the question that Johnson did not avail himself of a third opportunity to speak to the police, based on the evidence in the case, the jury could have reasonably inferred it was because Johnson had already spoken voluntarily to the police twice, or, based on Johnson's answer, they could have reasonably inferred he did not have the opportunity suggested by the prosecutor because he was not arrested by Detective Curley on the occasion in question.[61] Fourth, the "context" in *Bowe* was two conflicting and uncorroborated versions of the incident. Here, in sharp contrast, three eyewitnesses testified that Johnson was the shooter, the jury heard testimony from two more witnesses who testified Johnson admitted to shooting the victim, and expert witness testimony placed Johnson's cell phone at the scene of the crime.[62] Fifth, the Court immediately instructed the jury to "completely disregard" the prosecutor's question about Johnson's post-arrest silence:

> THE COURT: Ladies and gentlemen of the jury, I am striking that last question asked by [the prosecutor] and I am striking the answer, the last two questions relating to opportunities to speak to police.
> I will remind you that in this trial the defendant has no obligation to do anything. Someone is presumed innocent unless and until proven guilty. And I want you to

[60] *See* A75–76.
[61] State's Resp. at 9 ("Here it was clear to the jury that Defendant was willing to speak to the police. The jury saw both of his post-*Miranda* statements.").
[62] *Id.* at 8–9, 16.

> *completely disregard the question and any inference* you might have drawn from the question that [the prosecutor] asked about a third opportunity to speak to the police. That was an impermissible question.
>
> Do you understand?
>
> THE JURY: Yes.[63]

A trial judge's prompt curative instructions are presumed to cure error, and juries are presumed to follow them.[64] The Delaware Supreme Court has held that while the State "may not put a penalty on the exercise of a constitutional right," not "every reference to the exercise of the right to remain silent mandates reversal."[65]

In *United States v. Hale*, the U.S. Supreme Court held that evidence of post-arrest silence is so ambiguous that it lacks significant probative value and must therefore be excluded.[66] It is well-settled under Delaware law that "the prosecution may not put a penalty on the exercise of a constitutional right."[67] In other words, the State may not comment on a defendant's exercise of the right to remain silent.[68] Here, the prosecutor asked Johnson "Okay. You actually had a third opportunity to

---

[63] A76 (emphasis added). The trial judge watched the jury intently when she asked this question and recalls all jurors nodding yes in addition to saying "yes." *Contra Bowe*, 514 A.2d at 511 (curative instruction issued to jury was "disregard the fact of [the defendant's] whereabouts.").
[64] *Revel v. State*, 956 A.2d 23, 27 (Del. 2008).
[65] *Shantz v. State*, 344 A.2d 245, 247 (Del. 1975).
[66] *United States v. Hale*, 422 U.S. 171 (1975). "Reference to such insolubly ambiguous conduct for purpose of contrast with later exculpatory testimony at trial is fraught with prejudice. Thus, the risk of confusion is so great that it upsets the probative value of the evidence, and such evidence should be excluded." *Bowe*, 514 A.2d at 411 (citing *Hale*, 422 U.S. at 178) (internal citations omitted).
[67] *Shantz*, 344 A.2d at 246–47.
[68] *Bowe*, 514 A.2d at 411.

talk to Detective Curley, too; right?"[69] Such inference is equivalent to the State commenting on Johnson's exercise of his right to remain silent.

1. *Hughes* Test – Question About Johnson's Post-Arrest Silence

To determine whether an impermissible question prejudiced Johnson's right to fair trial, the Court applies the test identified in *Hughes v. State*.[70] In *Hughes*, a prosecutor impermissibly stated in his closing argument that the defendant admitted to having blood on his hands after a murder, although the defendant never actually admitted that fact.[71] The defendant in *Hughes* was convicted of Murder First Degree. On appeal, the Delaware Supreme Court reversed the conviction, finding that because the prosecutor's error addressed an issue central to a close case, it affected the defendant's substantial rights.[72]

In so ruling, the *Hughes* court articulated a three-part test to determine whether the fairness of the trial was adversely affected by prosecutorial misconduct: (1) the centrality of the issue affected by the alleged error; (2) the closeness of the case; and (3) the steps taken to mitigate the effects of the alleged error.[73] The

---

[69] A75.
[70] *Hughes v. State*, 437 A.2d 559, 571 (1981).
[71] *Id.* at 572.
[72] *Id.*
[73] *Baker v. State*, 906 A.2d 139, 149 (Del. 2006) (citing *Hughes*, 437 A.2d at 571).

*Hughes* factors are not conjunctive, i.e., one factor may be determinative.[74] The Court applies the test in a contextual, factually-specific manner.[75]

Regarding the first factor, the centrality of the issue affected by the error, the prosecutor's single, brief question about whether Johnson refused to speak with police after voluntarily speaking with police on two prior occasions was not central to the case, particularly given the wealth of evidence introduced by the State. This factor weighs in favor of harmless error.[76]

With regard to the second factor, the closeness of the case, the Court does not find that this case was a close case. It was far from it. Three eyewitness testimonies identified Johnson as the shooter. Aiun-Yea Chambers, one of those eyewitnesses, testified she heard an argument between Johnson and Boyd, and had no doubt the shot that killed Boyd came from Johnson.[77] Despite Defense Counsel's best efforts to impeach her, Chambers' testimony was credible and compelling. The State's case also included Johnson's admissions to witnesses Shakia Hodges and Joshua Hinton that he shot Boyd, expert witness testimony placing Johnson's cell phone at the scene of the crime, and Johnson's prison phone calls during which the State contended he

---

[74] *Id.*
[75] *Id.*
[76] *Cf. Spence*, 2014 WL 2089506, at *7.
[77] Tr. of Aiun-Yea Chambers Testimony Dated January 30, 2018, 14:21–23, 17:6–16, 19:8–12 (D.I. 17, 83).

coordinated plans to prevent Shakia Hodges from testifying.[78] This factor weighs heavily in favor of harmless error.

Regarding the third factor, the steps taken to mitigate the effects of the error, the Court took sufficient steps to avoid prejudice when it immediately instructed the jury to completely disregard the question and any inference drawn from the prosecutor's improper question.[79] Furthermore, any potential prejudice was mitigated when Johnson testified at trial that he voluntarily spoke to the police about the incident twice before his arrest.[80] And the jury was aware that although Johnson had a constitutional right not to testify, he voluntarily did so.[81] After considering the *Hughes* factors, the Court finds that the alleged prosecutorial misconduct, which was

---

[78] *See* State's Resp. at 8–9, 16. Johnson bases the "closeness" of his case on the fact that in his first trial five jurors found him not guilty. Mot. New Trial at 19. When explaining the test, the *Hughes* court referenced the *quality* of evidence when applying the closeness factor. *See Hughes*, 437 A.2d at 571. Accordingly, the Court will not look to the previous jury's inability to reach a unanimous verdict in Johnson's first trial to assess the closeness of the case in his second trial.

[79] *See* A76. The Delaware Supreme Court has consistently held that even prejudicial error is usually cured with an instruction to the jury. *Shantz*, 344 A.2d at 247; *Boatson v. State*, 457 A.2d 738, 743 (Del. 1983); *Diaz v. State*, 508 A.2d 861, 866–67 (Del. 1986); *Brokenbrough v. State*, 522 A.2d 851, 857 (Del. 1987); *Weddington v. State*, 545 A.2d 607, 612 (Del. 1988); *Edwards v. State*, 320 A.2d 701, 703 (Del. 1988); *Revel v. State*, 956 A.2d 23, 27 (Del. 2008) (holding, "[a] trial judge's prompt curative instructions 'are presumed to cure error and adequately direct the jury to disregard improper statements.' Juries are presumed to follow the trial judge's instructions."). At trial, the Court observed: "I'll say it again, it's a very attentive jury, they're very compliant. And I've asked them whether they can disregard the questions that I found objectionable and they said yes." *See* A83.

[80] *See* A75; Johnson testified that he spoke with the police on June 1, 2014 and July 15, 2014. He did so voluntarily.

[81] *See, e.g., Money v. State*, 2008 WL 3892777, at *3 (Del. 2008) (TABLE) (affirming denial of mistrial where prosecutor misstated the law, but final jury instructions correctly stated the applicable law).

objected to in a timely manner, did not amount to more than harmless error. The question about Johnson's post-arrest silence did not prejudicially affect Johnson's right to fair trial, and thus a new trial is not required under the *Hughes* test.

2. *Hughes* Test – Comment About Johnson's Access to Police Reports

Johnson next contends the State engaged in prosecutorial misconduct by misrepresenting to the jury that he had reviewed copies of police reports prior to testifying at trial.[82] During cross-examination, the prosecutor held up a file and asked Johnson, "So you and your attorneys have received police reports documenting everything that...." Defense Counsel objected before the prosecutor finished his question. According to Johnson, the question was an "assault[] on [his] credibility" based on inaccurate information because he was not privy to the police reports.[83] Johnson claims this misrepresentation prejudiced the jury and caused jurors to draw the conclusion that Johnson was able to tailor his trial testimony to documents he never saw.[84] The State contends it was merely exercising its right to impeach Johnson's trial testimony that was "conveniently consistent with the State's cell-tower evidence," but inconsistent with prior statements to police.[85] The State argues there was little or no prejudice because the prosecutor promptly corrected his

[82] Mot. New Trial at 12.
[83] *Id.* at 15.
[84] *Id.* at 16.
[85] State's Resp. at 10. In Johnson's prior statements, the State maintains he denied being at the crime scene, or in the surrounding neighborhood immediately following Boyd's shooting.

misstatement, the Court issued an immediate curative instruction to that effect, and this was not a close case.[86]

Johnson argues that *Baker v. State* is instructive on this issue.[87] The Court disagrees. In *Baker*, a daughter accused her father of sexual abuse and rape.[88] This was a "she said, he said" case, there was no physical evidence, and many defense witnesses testified that the alleged victim's testimony seemed inconsistent.[89] There were no accusations made by any of the father's other children, and several of his other children testified that the complaining daughter was untruthful.[90] The father's other daughters also testified that he never sexually abused them.[91] At trial, the prosecutor questioned the father as to his familiarity with sex offenses. The defense counsel "appeared to object on the basis that the question was irrelevant and beyond the scope of direct."[92] At sidebar, the trial judge in *Baker* suggested that the prosecutor avoid the question, and prosecutor resumed his cross-examination.[93] The trial judge did not give a curative instruction, strike the question, or sustain the objection in the jury's presence.[94] Baker was convicted of Second Degree Rape and

---

[86] *Id.* at 10–14; A78.
[87] *Baker*, 906 A.2d 139; Mot. New Trial at 16; A76.
[88] The father's youngest daughter made this accusation.
[89] *Baker*, 906 A.2d at 153–55.
[90] *Id.* at 145. The father had fifteen children by two different wives and several grandchildren.
[91] *Id.*
[92] *Id.* at 147.
[93] *Id.* at 147–48.
[94] *Baker*, 906 A.2d at 148.

two counts of unlawful sexual contact.[95] On appeal, Baker argued that the prosecutor engaged in misconduct that unfairly affected the outcome of his trial by asking questions that insinuated he had prior "familiarity with sex offenses."[96] The Delaware Supreme Court applied the *Hughes*[97] and *Hunter*[98] tests to determine whether the prosecutor's conduct prejudicially affected Baker's substantial rights. Given the closeness of the case and the fact that the defendant's credibility was a critical issue,[99] the Supreme Court held that the prosecutor's unfounded question "permit[ted] the jury to draw an impermissible conduct-from-character inference that [was] entirely unjustified,"[100] and resulted in reversible error. The ruling noted that the prosecutor's insinuation "may have suggested that the prosecutor had knowledge that Baker had 'some familiarity with sex offenses' when in fact the prosecutor admitted he had no good faith basis in fact to phrase the question as he did."[101]

This case is very different from *Baker*. Here, the State presented a wealth of evidence against Johnson, including the testimony of three eyewitnesses to the

---

[95] *Id.* at 142.
[96] *Id.* at 146.
[97] *Hughes*, *supra* note 70.
[98] *Hunter v. State*, 815 A.2d 730, 733 (Del. 2002). Even if the conduct is not found to have prejudiced the defendant under the *Hughes* test, Delaware Courts must subsequently apply the *Hunter* test, which considers "whether the prosecutor's statements are repetitive errors that require reversal because they cast doubt on the integrity of the judicial process."
[99] There was no physical evidence, and no witnesses other than the alleged victim.
[100] *Baker*, 906 A.2d at 153.
[101] *Id.* at 148.

shooting.[102] And, unlike in *Baker*, here the Court struck the improper question, instructed the prosecutor to advise the jury he made a mistake, and immediately issued a curative instruction:

> THE COURT: I don't even need to hear objection. You've now held up that file and suggested he's been privy to discovery and the evidence. You've now put in the jury's mind potentially that he's sitting here and won't tell the police the truth, even though he knows the truth and he had an obligation to come forward. All that flows from where you're about to head down. So you better get off this track.
>
> [PROSECUTOR]: Okay. Understood.
>
> [...]
>
> THE COURT: Right. And part of the way I'm going to cure this is [the prosecutor] is going to stand up and admit he made a mistake in front of the jury.
>
> [PROSECUTOR]: Understood, Your Honor.
>
> THE COURT: And you're going to correct this.
>
> [PROSECUTOR]: Yes, Your Honor.
>
> THE COURT: And I'm going to tell the jury after you correct it that you're to move on and that they should disregard any implication from your comment about holding up the file.
>
> [PROSECUTOR]: Understood, Your Honor. May I supplement the record?
>
> I just want to make clear that the State's intent of the subsequent – that registered the subsequent objection is wholly unrelated to the first objection, Your Honor.

[102] State's Resp. at 8–9, 16.

The State's intent was to make the point that the cell tower records emerged subsequent to this interview, and then his story changed which came through discovery.

THE COURT: I understand that. And I take you at your word, because you're an officer of the Court. And I don't believe that you ventured into this with ill motive.

Having said that, we now need to fix it.

[...]

THE COURT: I think you need to say that you misspoke and by "discovery," to the extent you suggested that everything had been given to the defendant, that's inaccurate. And then I'm going to tell them to disregard the question and the answer.

[PROSECUTOR]: Understood, Your Honor.

THE COURT: And I'm also going to tell them to disregard the question about receiving police reports.

You need to focus this line of inquiry to the extent you want to venture into it into information he was actually privy to. And you need to make sure in questioning him on this that you don't in any way suggest he had some obligation to come forward when he heard that he was the suspect or that he was being arrested or thereafter.

[PROSECUTOR]: I'm going to move on, Your Honor, so it's not an issue.

(Jury entered at 12:07 p.m.)

THE COURT: Welcome back. [Prosecutor]?

[PROSECUTOR]: Yes, Your Honor. I apologize to the Court and Mr. Johnson, that holding up the file was inaccurately done along with the question that was asked previously.

THE COURT: Ladies and gentlemen, I am striking the question relating to the file and the follow-up question. And it was an inappropriate question.

You are to disregard the question and the answer. Do you understand?

THE JURY: Yes, Your Honor.

THE COURT: Does everyone feel capable of doing that?

THE JURY: Yes.

THE COURT: All right. That question – those two questions asked by [the prosecutor] and any response by this witness should not be considered by you in any way, shape or form in your deliberations. Do you understand?

THE JURY: Yes, Your Honor.[103]

[...]

[DEFENSE COUNSEL]: I think the jury should have been informed that Demonte Johnson has never received any police reports in this case, and that wasn't said. Because at the point that the State –

THE COURT: I agree. I think the State ought to stipulate to that, I think the State should stipulate to a curative that he did not receive any police reports. And I will read that stipulation.

[DEFENSE COUNSEL]: That's fine. That will work.

THE COURT: And to the extent it's suggesting by your questioning that was an erroneous statement – because that way it doesn't put his credibility on the line, and I'm not commenting on the evidence. It's a stipulation. Okay?

[PROSECUTOR]: That's fine....[104]

[103] A76–79. The jury left the courtroom at 12:00 p.m. while sidebar discussion progressed. The jury returned at 12:07 p.m.
[104] A83.

In light of all the State's evidence against Johnson, his access to police reports (or lack thereof) was not a central issue, and this was not a close case.[105] Further, Defense Counsel's objection interrupted the prosecutor's question about Johnson's access to police reports. The Court went to great lengths to mitigate any potential prejudice resulting from the prosecutor's error.[106] The Court instructed the prosecutor to tell the jury he made a misstatement regarding Johnson's access to police reports. On re-direct, Defense Counsel's questions and Johnson's responses made it clear Johnson did not have access to the police reports and, therefore, could not have tailored his trial testimony based on the reports:

> Q. Demonte, at no point in this case prior to you testifying today did I provide you with any police reports; correct?
> A. Correct.
>
> Q. So if the prosecutor is saying that you received or reviewed police reports prior to you testifying, that's not accurate because you've never received police reports?
>
> A. Right, that's not accurate.[107]

Under the *Hughes* test, the alleged prosecutorial misconduct did not amount to more than harmless error, and a new trial is not required.

---

[105] As mentioned previously, the Court reviews timely objections under a harmless error standard of analysis. *Spence*, *supra* note 45. The State was relying on a number of pieces of evidence to prove its case, including statements Johnson made admitting he shot Boyd, eyewitness testimony, and cell phone location data. State's Resp. at 8–9, 16.
[106] A76–79, *supra* note 103; A83, *supra* note 104.
[107] Trial Tr. Dated Feb. 2, 2018, 129:20–130:6 (D.I. 86).

3. *Hunter* Test

The Court must next consider whether the prosecutor's statements about Johnson's post-arrest silence and purported access to police reports constituted repetitive errors that require reversal because they cast doubt on the integrity of the judicial process.[108] The State's very brief questioning, in both instances, was quickly curtailed by Defense Counsel's prompt objections and the Court's prompt curative instructions. When the prosecutor made an erroneous statement about Johnson's access to police reports, the Court instructed him to admit his mistake to the jury. The questioning at issue was not repetitive error, and it did not cast doubt on the integrity of the judicial process.[109] If anything, the question about Johnson's post-arrest silence, along with Johnson's response, cast doubt on the prosecutor's recall of the facts and led the jury to reasonably believe that Johnson did not, in fact, have a third opportunity to speak to Detective Curley. The State's questioning about Johnson's purported access to the police reports, at the end of the day, hurt the prosecutor's credibility, not Johnson's, because the prosecutor, at the Court's insistence, admitted to the jury "that holding up the file was inaccurately done along with the question that was asked previously." The prosecutor's questions do not

[108] *Hunter*, 815 A.2d at 733; *see Baker*, 906 A.2d at 149.

[109] Here, the prosecutor's challenged conduct was based on a single question about Johnson's post-arrest silence. In *Hunter*, the defendant identified nine instances of the prosecutor's allegedly improper comments to the jury. *Hunter*, 815 A.2d at 733.

require a new trial because the Court does not find that the error resulted in actual prejudice, or so infringed on Johnson's fundamental right to a fair trial as to raise a presumption of prejudice.[110] Consequently, Johnson's Motion for New Trial based on the improper questioning about his post-arrest silence and access to police reports is **DENIED**.

**C. Hinton's Testimony**

Johnson argues he is entitled to a new trial because Joshua Hinton's trial testimony prejudiced his fundamental right to a fair trial.[111] Johnson focuses his argument on the fact that when the prosecutor asked Hinton whether he told police Johnson admitted shooting Boyd, Hinton testified, "that might have not been the one [shooting] he was talking about."[112] The trial judge clearly recalls that Hinton was a less-than-cooperative State's witness and it was quite evident to the Court that Hinton did not want to testify against Johnson. As the State notes, Hinton "fumbled his way through trying to explain away Defendant's confession" at trial.[113] The State argues that Hinton's testimony did not prejudice Johnson because Hinton never

---

[110] *Hughes*, 490 A.2d at 1043.
[111] Mot. New Trial at 17.
[112] A98.
[113] State's Resp. at 14. Although Hinton told police about Johnson's confession to avoid his own criminal charges, he testified that he did not expect to be called as a witness against Johnson. *See* A98.

referred to Johnson shooting anyone, and Hinton's "hypothetical statements" could be interpreted in a variety of ways.[114]

Prior to testifying, Hinton, a close friend to Johnson, told police in a voluntary out-of-court conversation that Johnson confessed Boyd's murder to him.[115] On direct-examination, Hinton tried to take back his statement, making multiple contradictory statements, including: "[The police and I] was both lying." "I actually didn't lie to [the police] about anything. I didn't lie to him." "I was high." "I didn't really say anything to [the police]...."[116] Hinton's confusing and contradictory testimony continued:

> Q. Did you make a statement about the homicide case that Demonte Johnson is on trial for right now?
>
> A. Yes, I did.
>
> Q. What did you tell [the police]?
>
> A. I said he might have spoke to me about it.
>
> Q. Okay. What else?
>
> A. That's it. I told him everything that he heard at trial. I didn't tell him nothing more than that.
>
> Q. Did you tell [the police] that the defendant told you that he shot and killed Alphonso Boyd?
>
> A. No, I didn't. I told him that he could have been talking about somebody else.

---

[114] State's Resp. at 15.
[115] *Id.* at 14.
[116] A95–96.

> Q. You don't –
>
> A. Listen, this is what I said. I said I think he told me about it. And unless he put the recorder where he wanted to, I told him, I said, "Well, you know what, he might have not told me about it. He might have been talking about something different."[117]

And on re-direct examination:

> Q. So you're willing to tell a detective that your friend who's closer than a brother confessed a murder to you just so you can post bail?
>
> A. I took it back when I told him. If you look at the recording, I told him, I said, "You know what," I said, "that might have not been the one he was talking about." That's exactly what I said. You can't take a lie or the truth all the time, you got to take the whole thing.[118]

The day after Hinton testified at trial, Johnson made an untimely Motion for Mistrial, arguing that Hinton insinuated twice that Johnson confessed to another murder and the jury might find guilt based on that ostensible prior bad act, rather than the evidence presented at trial.[119] Defense Counsel told the Court he made a strategic decision to delay the objection and Motion for Mistrial so as to avoid highlighting Hinton's comments and "because the direct examination continued to move on from that point."[120] The Court denied Johnson's Motion for a Mistrial,

---

[117] *Id.*

[118] A98.

[119] Trial Tr. Dated Feb. 2, 2018, 4:22–8:4; Mot. New Trial at 17.

[120] Trial Tr. Dated Feb. 2, 2018, 5:19–21. The Court agrees with Defense Counsel that Hinton's direct examination quickly moved on. Had the trial judge felt that Hinton's trial testimony during his 8-minute direct examination was prejudicial, she would have *sua sponte* intervened. Defense

explaining that it was not a close case, Hinton damaged his own credibility when he testified he was high and lying when he made the comments to police, Hinton's testimony was difficult to follow, and a curative instruction would cure any potential prejudice:

> THE COURT: First of all, Mr. Hinton said under oath that his statement to the police was not true. At one point he said he didn't lie to Detective Curley, then he said he did. He said he was high. He gave different versions about whether he was incarcerated or on the run at the time of the murder.
> [...]
>
> He said, "I told him that Demonte shot Izzo, but then I took it back." And the jury, I'm not even sure – if they did pick up his comments about "I told Detective Curley later I didn't know whether he was talking about somebody else." Even if the jury did pick that up, I'm not sure what, if any, weight they would have given it or whether they would have speculated about whether there was some other person that the defendant was involved in killing.
>
> And I say that because it was – a reasonable jury could infer from that testimony yesterday that this was a witness who said something, was trying to get out of saying it, and was all over the place, to quote the State.
>
> And in the context of where those comments come up in his statement, it is clear that he is – he's just difficult to follow. And his truthfulness, his credibility is suspect. And I just don't see how it rises to the level of necessitating a mistrial.
>
> I mean, there are three eyewitnesses to the shooting that have identified the defendant at the shoot: Watson, Chambers and Maddrey. There's a witness that says that

---

Counsel did not object to Hinton's confusing trial testimony and the Court did not find Hinton's statement that he lied to the police credible, or prejudicial to Johnson's right to fair trial.

> the defendant came to her house, had a weapon and admitted he killed the victim.
>
> And I think looking at all the evidence that's in the case so far, in addition to the fact – again, I reiterate – that Hinton's testimony on the stand I'm not sure what weight, if any, the jury is going to give to whatever portion they might. But he did say he was high and he repeatedly indicated that he lied.
>
> [...]
>
> But to the extent there's a concern that somehow the jury might have walked away from that if indeed they even picked it up, that he was saying that this defendant had committed another murder, I think that it would be appropriate and curative for any possible prejudice that might have resulted from that statement – which I do note was not elicited by the State and was unresponsive to the question posed – would be to give them a 404(b) instruction without calling direct attention to what he said.
>
> [...]
>
> But given the, my vantage point, which is a good one from where I sit and having paid close attention to all the testimony in the record and having watched Mr. Hinton on the stand and heard him in his statement in the courtroom and watching the jury, the environment is not such that I am concerned his right to a fair trial has been jeopardized at all.[121]

Defense Counsel agreed to the trial judge's *sua sponte* jury instruction on the issue.[122]

The Court must analyze whether Hinton's non-responsive testimony warrants a new trial. According to the Delaware Supreme Court in *Drummond v. State*:

---

[121] *Id.*, 16:3–20:21. "Izzo" was the victim's nickname.
[122] *Id.*, 143:15–144:21.

> When deciding whether a witness that gives an answer that goes beyond what was asked and provides prejudicial information requires a mistrial, a trial judge should consider four factors: 'the nature and frequency of the conduct or comments, the likelihood of resulting prejudice, the closeness of the case and the sufficiency of the trial judge's efforts to mitigate any prejudice in determining whether a witness's conduct was so prejudicial as to warrant a mistrial.'[123]

With regard to the first factor, Hinton's testimony was confusing, contradictory, not credible, and at points, unintelligible. The frequency is best characterized as not frequent.[124] Hinton testified that he spoke to police voluntarily, but he never testified that Johnson confessed to shooting anyone. This factor weighs against a finding of prejudice.

Regarding the second factor, the Court finds that Hinton's vague statement that Johnson "might have not told [him] about it," and that he "might have been talking about something different," did not prejudice Johnson's right to fair trial.[125] First, as noted above, Hinton's challenged statements were confusing, contradictory, not credible, and infrequent. Second, during his trial testimony, Hinton tried mightily and intentionally to damage his own credibility, so as to protect his close friend.

---

[123] *Drummond v. State*, 51 A.3d 436, 442 (Del. 2012) (citing *Pena v. State*, 856 A.2d 548, 550 (Del. 2004); *Dickens v. State*, 2010 WL 2889501, at *4 (Del. 2010) (TABLE)).
[124] *See* A95. The Trial Judge remembers Hinton's testimony being very difficult to understand.
[125] *Id.*

With regard to the third factor, this was not a close case.[126]

The fourth factor also weighs against a finding of prejudice. The Court took meaningful action to mitigate any possible prejudice from Hinton's testimony.[127] After finding that Johnson had not carried his burden to demonstrate that any of Hinton's statements, to which Defense Counsel did not object, affected the outcome of the trial, the Court *sua sponte* crafted a curative instruction to mitigate any potential prejudice from Hinton's trial testimony.[128] Defense Counsel agreed to that instruction,[129] and the Court read that instruction to the jury immediately before jury deliberations:

> THE COURT: You have heard evidence of certain acts allegedly committed by the defendant. These acts are other than the alleged wrongdoing for which the defendant is now on trial.
>
> You may not consider these other acts for the purpose of concluding that the defendant has a certain character, or character trait, and was acting in conformity with that character or character trait with respect to the crimes charged in this case. You may not use the evidence of other acts to conclude that the defendant is a bad person, or has a tendency to commit criminal acts, and it therefore probably guilty of the charged crimes.[130]

---

[126] State's Resp. at 8–9, 16, *supra* note 78.
[127] *Cf. Fuller v. State*, 860 A.2d 324, 329 (Del. 2004) (holding that a "trial judge properly exercised his discretion in deciding that a curative instruction was a meaningful and practical alternative to declaring a mistrial.").
[128] Trial Tr. Dated Feb. 2, 2018, 19:7–22:2. The jury was very attentive and it is presumed that juries follow curative instructions. *Supra* note 79.
[129] Trial Tr. Dated Feb. 2, 2018, 22:5, 143:15–144:21.
[130] Trial Tr. Dated Feb. 5, 2018, 90:2–14.

The Court has no reason to believe the jury failed to adhere to this clear, emphatic instruction.

Given the weight of the State's evidence against Johnson and the Court's curative instruction addressing Hinton's non-responsive testimony, the Court finds that a mistrial was not warranted.[131] Hinton never testified in front of the jury that Johnson shot Boyd or that Johnson told him he shot Boyd. Johnson's Motion for New Trial based on Hinton's testimony is **DENIED**.

In light of the narrow standard for granting a motion for new trial,[132] the Court rejects Johnson's arguments that a new trial is required in the interest of justice, and finds Johnson's conviction to be the result of a fair trial. No error complained of in the Motion resulted in actual prejudice or so infringed upon Johnson's fundamental right to a fair trial as to raise a presumption of prejudice.[133]

---

[131] "A trial judge sits in the best position to determine the prejudicial effect of an unsolicited response by a witness on the jury." *Drummond*, 51 A.3d at 442.

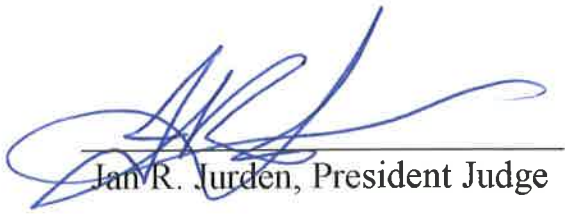
[132] *Cf. State v. Chisum*, 1991 WL 190340, at *1 (Del. Super. Sept. 19, 1991) (holding, "In light of this narrow standard for granting a motion for new trial," the Court rejects the defendants' arguments).

[133] *See Hughes*, 490 A.2d at 1043; *see Starling*, 882 A.2d at 755.

## V. CONCLUSION

For the reasons explained above, the Court finds a new trial is not warranted under Superior Court Criminal Rule 33. Defendant Demonte Johnson's Motion for New Trial is therefore **DENIED.**

**IT IS SO ORDERED.**



Jan R. Jurden, President Judge

Original to Prothonotary
cc: Matthew Frawley, Esq.
Eric Zubrow, Esq.
John A. Barber, Esq.
Brian J. Chapman, Esq.